IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1198 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

HAROONRASHID ABDULMATINKHAN PATHAN

Appearance:

1. Special Civil Application No. 1198 of 2004

MR HS MUNSHAW for Petitioner No. 1

MR VM DHOTRE for Respondent No. 1

RULE UNSERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has preferred this petition

in order to challenge the order dated 03/09/03 passed by the Industrial Tribunal, Ahmedabad, at Annexure 'H' to the petition, in Approval Application (IT) No.26/1999 in Reference (IT) No.433/1992 whereby the Tribunal had rejected the Approval Application on the ground that the respondent was not paid the medical allowance.

2.0 Mr.H S Munshaw learned advocate for the petitioner has submitted that in view of the order dated 24/08/01 passed in Approval Application (IT) No.26/1999, the order of dismissal is already substituted by imposing a penalty of three increments with future effect by the appellate authority. Therefore, the question of approval before the competent authority does not survive.

3.0 In that view of the matter, the order dated 03/09/03 of the Industrial Tribunal, Ahmedabad, was passed on mis-conception of fact, inasmuch as the order of the appellate authority at Annexure 'J' to the petition and the aforesaid fact, both were drawn to the notice of the Industrial Court. In spite of that, the approval was rejected.

4.0 It is well settled that when the question of dismissal was not in existence and when the employer had substituted penalty in the departmental appeal, then the approval which was sought, be deemed to have been withdrawn. In that view of the matter, the application before the Industrial Court, Ahmedabad, being Approval Application (IT) No.26/1999 in Reference (IT) No.433/1992 has become infructuous and the Tribunal ought to have disposed of the same on this premise itself. However, the Approval Application has been rejected.

5.0 Therefore, when the question of dismissal was not before the Industrial Court, then the Industrial Court ought not to have rejected the Approval Application. In that view of the matter, the impugned order dated 03/09/03 is required to be quashed and set aside.

6.0 For the foregoing reasons, this petition is allowed. The order of the Industrial Court dated 03/09/03 passed by the Industrial Tribunal, Ahmedabad, in Approval Application (IT) No.26/1999 in Reference (IT) No.433/1992 is quashed and set aside in view of the fact that the petitioner Corporation has already substituted the penalty of three increments with future effect. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

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